IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 113 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMNABAI T MANGLANI

Versus

GOPALDAS K THAKKAR

Appearance:

MR PM THAKKAR for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. This is landlord's revision under sec.29(2) of the Bombay Rent Act. Shri DM Thakkar for the landlord, revisionist and Shri MS Shah for the tenant, respondent have been heard.

2. From the arguments of Shri Thakkar, it appears that the case has a chequered history. The landlord filed suit no.121/1975 in the Small Causes Court for eviction of the tenant from the tenanted accommodation. The suit was filed under sec.12(3)(a) of the Bombay Rent Act. Decree for eviction was passed by the trial Court under sec.12(3)(a) of the Bombay Rent Act. The appeal filed by the tenant was dismissed. Thereafter, Civil Revision Application No.843/1981 was filed in this Court, which was decided on 30-9-1982 with finding that the suit could never be decreed under sec.12(3)(a) of the Bombay Rent Act. The judgments and decrees of the two courts below were set aside by this Court and the matter was remanded to the trial Court for consideration, whether the tenant had deposited the amount in compliance of the provision of sec.12(3)(b) of the Rent Act and whether he was entitled to the benefit of sec.12(3)(b).

3. After remand, the trial Court concluded in its judgment dated 18-8-1983 that the landlord was not entitled to decree for eviction, inasmuch as, the defendant, tenant is entitled to protection of sec.12(3)(b) of the Bombay Rent Act.

4. Feeling aggrieved by this judgment and decree, the landlord preferred an appeal, which was dismissed on 19-6-1990. Feeling aggrieved, the landlord has preferred this revision.

5. Having heard the learned counsel for the parties and after examining the judgment of CRA No.843/1981, it is now concluded that the landlord was not entitled to decree for eviction under sec.12(3)(a) of the Bombay Rent Act. The only point for consideration left was, whether the tenant was entitled to protection of sec.12(3)(b) of the Act or not. On this point, the lower appellate Court placed reliance upon a judgment of this Court in MALGANBHAI RASULBHAI v. PUSHPAVADAN MANILAL DESAI 27(2) GLR 1024, wherein it is observed that, amendment in sec.12(3)(b) of the Bombay Rent Act by the Amendment Act of 1985 has retrospective effect and not prospective effect. This view of the lower appellate Court is certainly errorneous in view of subsequent pronouncement by the Division Bench of this Court in the case of BAI SAKARBHAI DEVRAJ v. IBRAHIM ABDUL 1994(2) GLR 1091. In this case, the Division Bench, after considering various pronouncements of the Apex Court observed as follow :

> "The pronouncements of the Supreme Court do take a view that the amended provisions, including the omission or the deletion of word 'regularly' can

not be said to be retrospective in operation. The Court is bound by what has befallen from the Apex Court. This concluded position, therefore, would guide us to say in the instant cases that, the amended provisions, including the deletion/omission of the expression 'regularly' can not be said to be retrospective in nature but are merely prospective in operation. The Court opines accordingly."

In view of this verdict of the Division Bench of this Court, the view taken by the lower appellate Court is patently errorneous and it has to be held that the Amendment Act of 1985 has prospective operation and not retrospective operation.

6. The lower appellate Court was obliged to determine, whether the tenant is entitled to protection of sec.12(3)(b) of the Rent Act or not. On this point, the attention of the lower appellate Court was never drawn, nor it has given any finding on this point. For the first time, finding on this point, involving consideration of evidence etc., can not be given in this revision. This exercise has to be done by the lower appellate Court.

7. In view of the aforesaid discussion, the finding of the lower appellate Court that the Amendment Act of 1985 deleting the word 'regularly' from sec.12(3)(b) of the Bombay Rent Act is retrospective, is hereby set aside. The revision, therefore, partly succeeds and is partly allowed. The appeal is remanded to the lower appellate Court with direction that, it shall hear the parties and examine whether the tenant has deposited the amount in compliance of sec.12(3)(b) in accordance with law or not, and shall, thereafter decide the appeal in accordance with law. Since the matter has become sufficiently old, the lower appellate Court is directed to decide the appeal within a period of two months from the date of production of certified copy of this judgment. No order as to cost.

February 16, 2001. [D.C. Srivastava, J.]

/sakkaf